

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Brownell E. Mack,

Petitioner,

vs.

Hennepin County,

Respondent.

ORDER DENYING MOTIONS FOR
SUMMARY DISPOSITION

This matter is before the Administrative Law Judge on motions for summary judgment filed by both Petitioner and Respondent. Martin D. Munic, Assistant Hennepin County Attorney, Office of the Hennepin County Attorney, A-2000 Government Center, Minneapolis, Minnesota 55487, appeared on behalf of Respondent, Hennepin County. Thomas Bennett Wilson, III, Attorney at Law Wilson Law Firm, Suite 220, 4933 France Avenue South, Edina, Minnesota 55410, appeared on behalf of Petitioner, Brownell E. Mack.

On May 24, 1995, both parties filed motions for summary judgment, including memoranda in support of the motions. On June 5, the parties submitted replies to each other's motion for summary judgment.

The record closed on this motion on June 5, 1995, upon the receipt of the reply memoranda.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying memorandum, the Administrative Law Judge makes the following:

ORDER

1. Respondent Hennepin County's motion for summary judgment is hereby DENIED.

2. Petitioner Brownell E. Mack's motion for summary judgment is hereby DENIED.

3. A hearing on the merits of substantive issues shall commence on September 13 and 14, 1995, at the Office of Administrative Hearings. If this date is

inconvenient for the parties, they will jointly decide on another future date in consultation with Ms. Nanci Thomas, Office of Administrative Hearings Docket Clerk.

Dated this ____ day of July, 1995.

ALLEN E. GILES
Administrative Law Judge

MEMORANDUM

Both parties have moved for summary judgment. Respondent Hennepin County asserts that because Petitioner Brownell E. Mack was absent without leave authorized by his supervisors, he voluntarily separated from employment. Hennepin County argues that, because the separation was voluntary, as a matter of law, the Veterans Preference Act does not apply in this case. Petitioner Mack asserts that summary judgment is appropriate because he was involuntarily separated from employment without notice of his rights as a veteran in violation of the Veterans Preference Act. Petitioner argues that he is entitled to prevail as a matter of law because he did not get a written notice and hearing as required by the Veterans Preference Act.

The Administrative Law Judge is empowered by Minn. Rules pt. 1400.5500K and 1400.6600 to rule on contested cases by summary disposition in accordance with the standards established under Minnesota Rules of Civil Procedure, Rule 56. Summary disposition is appropriate where the pleadings, admissions, affidavits and other documents on file "show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03, Sauter v. Sauter, 70 N.W.2d 351, 353 (Minn. 1955). A genuine issue is one which is not sham or frivolous and a material fact is a fact whose resolution will affect the result or outcome of the case. Highland Chateau, Inc. v. Minnesota Department of Public Welfare, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), rev. den (Minn. 1985).

A party opposing summary disposition may not rely on general facts, but must present specific facts which create a genuine issue for trial. Foley v. Honeywell, Inc., 488 N.W.2d 268, 272 (Minn. 1992). The nonmoving party must establish a genuine issue by "substantial evidence", i.e., evidence sufficient to avoid a directed verdict. Peterson v. Colonial Insurance of California, 493 N.W.2d 152, 154 (Minn. Ct. App. 1992) (quotations omitted).

Upon review of argument of the parties, the Judge has determined that the motions for summary judgment made by both parties should be denied according to the standards summarized above.

Hennepin County's motion for summary judgment is denied because there is a factual dispute regarding whether Mr. Mack was absent without leave. It appears from

the argument submitted by Mr. Mack that he will provide testimony at hearing which supports a claim that he had been given permission for his absences from work. Because Hennepin County's argument regarding voluntary separation assumes Petitioner was absent from his job without permission, there is a genuine issue as to a material fact. Hennepin County's motion for summary judgment must be denied.

Petitioner Mack moves for summary judgment on the basis that Minn. Stat. § 197.46 was violated by Hennepin County when he was terminated. Petitioner argues that the applicable law prohibits a public employer from involuntarily terminating a veteran except after hearing and upon cause shown. Essential to Petitioner's claim is that he was terminated involuntarily. There is a factual dispute as to whether or not the Petitioner was terminated involuntarily. Because the voluntariness of Mr. Mack's termination is disputed, there is a genuine issue as to a material fact. Petitioner's motion for summary judgment must be denied.

A trial is necessary to determine whether liability attaches as a result of the res gestae. It is appropriate to limit the liability issue to the voluntariness of Petitioner Mack's separation from employment. The Judge encourages the parties to stipulate facts relating to the damage issue, if possible.

AEG

May 19, 1995

Thomas Bennett Wilson, III
Wilson Law Firm
4933 France Avenue South
Edina, MN 55410

Martin D. Munic
Assistant Hennepin County Attorney
Hennepin County Attorney's Office
A-2000 Government Center
Minneapolis, MN 55487

RE: Brownwell E. Mack, Petitioner v. Hennepin County, Respondent; OAH
Docket No. 3-3100-9589-2

Dear Counsel:

Enclosed and served upon you is the Administrative Law Judge's Order Continuing Hearing Allowing Parties to Dispose of Legal Issues by Summary Disposition in the above-entitled matter.

Yours very truly,

ALLEN E. GILES
Administrative Law Judge

Telephone: 612/349-2543

AEG:lr
Enclosure

STATE OF MINNESOTA))
COUNTY OF HENNEPIN) SS

AFFIDAVIT OF SERVICE BY U.S. MAIL

LaVon Regan, being first duly sworn, hereby deposes and says that on the 19th day of May, 1995, in the City of Minneapolis, county and state aforementioned, she served the attached ORDER OF THE ADMINISTRATIVE LAW JUDGE CONTINUING HEARING ALLOWING PARTIES TO DISPOSE OF LEGAL ISSUES BY SUMMARY DISPOSITION, Docket No. 3-3100-9589-2, by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid and addressed to the individuals named herein.

Thomas Bennett Wilson, III
Wilson Law Firm
4933 France Avenue South
Edina, MN 55410

Martin D. Munic
Assistant Hennepin County Attorney
Hennepin County Attorney's Office
A-2000 Government Center
Minneapolis, MN 55487

LaVon Regan

Subscribed and sworn to before me
this 19th day of May, 1995.

Notary Public

July 7, 1995

Thomas Bennett Wilson, III
Wilson Law Firm
4933 France Avenue South
Edina, MN 55410

Martin D. Munic
Assistant Hennepin County Attorney
Hennepin County Attorney's Office
A-2000 Government Center
Minneapolis, MN 55487

Re Brownwell E. Mack, Petitioner v. Hennepin County, Respondent; OAH
Docket No. 3-3100-9589-2

Dear Counsel:

Enclosed and served upon you is the Administrative Law Judge's Order Denying
Motions for Summary Disposition in the above-entitled matter.

Yours very truly,

ALLEN E. GILES
Administrative Law Judge

Telephone: 612/349-2543

sh
Enclosure

STATE OF MINNESOTA))
COUNTY OF HENNEPIN) SS

AFFIDAVIT OF SERVICE BY U.S. MAIL

Sandra A. Haven, being first duly sworn, hereby deposes and says that on the 7th day of July, 1995, in the City of Minneapolis, county and state aforementioned, she served the attached ORDER OF THE ADMINISTRATIVE LAW JUDGE DENYING MOTIONS FOR SUMMARY DISPOSITION, Docket No. 3-3100-9589-2, by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with first class postage prepaid and addressed to the individuals named herein.

Thomas Bennett Wilson, III
Wilson Law Firm
4933 France Avenue South
Edina, MN 55410

Martin D. Munic
Assistant Hennepin County Attorney
Hennepin County Attorney's Office
A-2000 Government Center
Minneapolis, MN 55487

Sandra A. Haven

Subscribed and sworn to before me
this 7th day of July, 1995.

Notary Public

